IN THE SUPREME COURT OF THE UNITED STATES

October Term 1978
No. 78-951

ROSALIE L. MORTON,

Petitioner,

vs.

MAURICE R. MORTON,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION ONE

SUPPLEMENTAL BRIEF UNDER UNITED STATES RULES OF COURT 24(5); APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI AND SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL BRIEF UNDER UNITED STATES RULES OF COURT 24(5): application for extension of time: Substantial Federal Questions

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TO THE HONORABLE CHIEF JUSTICE, WARREN E. BURGER, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner respectfully applies to this Court for an extension of time to file the Petition for writ of Certiorari with this Court and represents (1) The late filing was beyond the control of petitioner and excusable, and (2) The petition presents substantial Federal Questions as to the extent, if any, the State of California is subject to the prohibitions and mandates of the supremacy clause of the United States

Constitution, the United States Constitution and Amendments, and Treaties of the United States.

Under Rule 24(5) United States Rules of Court, petitioner respectfully requests that, should this Court find legal excuse for the three day late filing of the petition for writ of certiorari, this supplemental brief be considered as clarification of, corrective of, and supplemental to the petition for writ of certiorari delivered to Airborne and TWA airlines on December 4, 1978 for guaranteed "counter to counter" deliver to this Court on December 5, 1978.

I
LATE DELIVERY WAS EXCUSABLE AND NOT CONTROLLABLE

Petitioner respectfully represents to this Court as follows:

1. The record on appeal presents substantial federal questions. On September 7, 1978, the Supreme Court of California denied a hearing as to the unpublished Opinion of Respondent Court, 2nd Civ. 52725. A reproduction of the postcard denial is annexed hereto as Appendix A.

2. Notice of Appeal and/or Certiorari, and a request for certification of the record on appeal, was filed with the Clerk of the Court of Appeals, Second Appellate District, State of California, and a copy lodged with the Clerk of this Court, on or about September 15, 1978.

3. A certified copy of the notice of appeal and/or certiorari and the docket fee was sent to the Clerk of this Court, and received on or about December 6, 1978, and not thereafter.

4. On December 4, 1978, the forty (40) printed copies of Petition For Writ of Certiorari, printed by Westside Law Publishers, 606 Wilshire Boulevard, Santa Monica, California, were delivered personally, by Robin J. Sherburne, manager of Westside Publishing, to Airborne. Delivery to the Clerk of this Court was guaranteed for December 5, 1978. The declaration of Robin J. Sherburne is annexed as B-1.

5. Airborne received the forty copies of the petition and on December 4, 1978 delivered the package to TWA, flight 78. Delivery to the Clerk of this Court was guaranteed for December 5, 1978. The declaration of Len Piazzon, district manager of Airborne, and the business records noting receipt by TWA and guaranteed delivery to the Clerk of this Court, is annexed hereto as Appendix B-2.

6. Petitioner called the Clerk of this Court, by telephone, on December 5 and December 6, 1978, to verify delivery. On notification that delivery had not been made either on December 5, 1978 or December 6, 1978, petitioner sent a telegram to the Clerk of this Court requesting an extension of time to file the petitions. A reproduction of that telegram is annexed hereto as C.

7. On December 7, 1978 and December 8, 1978, petitioner prepared a petition and application to this Court for an extension of time to file the petition. Included therein were the original

documents of A, B-1, B-2, and C. The application for extension of time, and the forty copies of the Petition for Writ of Certiorari, was received by the Clerk of this Court on or about December 9, 1978.

8. On or about December 11, 1978, the Honorable Associate Justice of this Court, William R. Rehnquist, denied petitioner's application for extension of time.

9. Petitioner presents to this Court substantial Federal questions.

Included in those federal questions, but not limited thereto, are questions already decided by this Court and can be found in published Opinions, to wit:

a. The prohibitions on the State action restricting transmutation of property;

b. The prohibitions on State action denying the equal protection of the law;

c. The prohibitions on the State action impairing contractual obligations;

d. The prohibition on State action denying procedural and substantive due process and a fair trial, and trial on the merits;

e. The prohibition on State action discriminating as to age and/or sex whereby property and personal rights, as guaranteed by the United States Constitution,

and the supremacy clause therein, are violated.

Wissner v. Wissner,
388 U.S. 655, 94 L.Ed. 424,
70 S.Ct. 398;

Free v. Bland,
369 U.S. 663, 8 L.Ed.2d 180,
82 S.Ct. 1089;

Regents of the University of California v. Bakke,
___ U.S. ___, 57 L.Ed.2d 750,
___ S.Ct. ___;

Shelley v. Kraemer,
334 U.S. 1;

Green v. California
399 U.S. 159;

Stanton v. Stanton,
421 U.S. 7, 43 L.Ed.2d 688,
95 S.Ct. 1373.

These questions, presented to the appellate Courts of California, by petitioner, in the briefs on record on appeal, were neither discussed by Respondent, nor did he present contrary evidence, citations of law and/or authorities.

The unpublished Opinion of Respondent Court refers to these questions, in passing, as follows:

"It is only to be expected that in more than two hundred and fifty pages of briefs, appellant would have raised some inconsequential issues. To the extent these issues have not been expressly addressed, it should be noted that they have been considered and found totally lacking in merit."

Unpublished Opinion, pp. 15, 16.

The federal questions presented on Appeal are found in the record on appeal at the location designated as petitioner's closing brief (c.b) petition for rehearing (r.h.) petition for hearing in the Supreme Court of California (h) Petition for Writ of Certiorari, Court of Appeal and California Supreme Court p.c.) and applcation for certification of federal Questions on appeal (c.q) and set forth in footnote 1.[1/]

1/ Record on Appeal, references to location of Federal Questions presented:

Petitioner's Closing brief page 11, reference to the denial of the equal protection of the laws, and the application as to failure to reimburse, In re Marriage Bouquet;

Petitioner's Closing brief, pages 28 and 30, Green v. California, and the advisement that this federal question has been decided by the United

(con't p. 7)

Petitioner's request and application for certification of the Federal Questions, on appeal and/or certiorari to this Court, was summarily denied with the following statement on the postcard.

1/ (con't)

States Supreme Court, wherein refusal to permit impeachment, and the lack of substantial evidence and other procedural prohibited state action is within the United States Constitution. (covers the procedural errors as to lack of substantial evidence, attorney client privilege, etc.);

Petitioner's brief, page 51, reference to the supremacy clause for reference in culmination of discussion as to the Fox pension and County pension and the express provision of Art. 1 §10 United States Constitution;

Petitioner's closing brief, page 54, culminating discussion of the taking of petitioner's separate property of the Fox pension payments and annuity, and unmature County pension after death of respondent, stating the application of the "Federal Constitution, a denial of equal protection of the laws and of due process;"

Petitioner's closing brief, pages 64, 65, reference to the supremacy of the Federal Constitution and the denial of petitioner her separate property rights, and the denial of her entitlement to the equal protection of the laws. Related to the

(con't p. 8)

"Because the subject appeal was decided solely on state grounds, the petition is denied." - annexed as Appendix D.

1/ (con't)

pension plans and existing property;

Petitioner's closing brief, page 82, as to the findings concerning High Knoll, the pensions, and petitioner's separate property, reference to the guarantees of the United States Constitution and property right guarantees therein, and due process clause, and 14th amendment of the United States Constitution;

Petitioner's closing brief, page 42, as to capricious judicial action;

Petition for rehearing, headnotes as to each item, and body, Treaty of Guadalupe Hidalgo, United States Constitution, supremacy clause;

Petition for Hearing in the Supreme Court, each item in headnotes, supremacy clause Federal Const., 9th, 14th amendments, Art. 1 §10, Treaty, application in body as to each pension, High Knoll, procedural due process, insurance;

Petition for writ of certiorari, or other alternative writ in California Supreme Court, each headnote refers to Treaty, supremacy clause,

(con't p. 9)

State grounds, independent of the United States Constitution, and the supremacy clause, Article VI cl 2, which include the property rights and personal rights guaranteed by the Treaty of Guadalupe Hidalgo, Articles VIII and IX, and the amendments to the United States Constitution, do not and can not exist in California. A claim of prohibited state action which is violative of guaranteed Constitutional rights, raises a substantial federal question.

The certification of Federal Questions, on appeal and/or certiorari, to this Court, is of long standing in California, and petitioner's request is not uncommon.

Whitney v. California,
274 U.S. 357, 71 L.Ed. 1095.

And, the determination if such federal questions exist is itself a substantial federal question, to be determined by this Court on examination of the record on appeal and/or certiorari.

1/ (con't)

14th Amendment, and the body contains citations and application and further references;

Request for certification of record on appeal; each item separately states the supremacy clause, the federal constitution, Treaty, 14th, 9th, 5th Amendments, Art I §10, as applied in the Petition for Writ of Certiorari in this Court.

Honeyman v. Hanan,
300 U.S. 14, 81 L.Ed. 476,
57 S.Ct. 350 (1937).

Respondent Court, in the unpublished Opinion, has decided these Federal Questions contrary to the Opinions of this Court.

Petitioner has not presented federal questions concerning those procedural and functional proper governmental interests in residency requirements, method of filing, answering, proceeding, and trying issues concerning "common" property on the dissolution of a marriage. These are proper governmental, and local police power, concerns.

Presented, as substantial federal questions, and not yet decided by this Court, or decided by this Court but in another setting or by inference, are further substantial federal questions:

a. Whether the State of California has separate and exclusive "local law" as to personal and property rights, which overrides the United States Constitution and the supremacy clause;

b. Whether the Treaty of Gudalupe Hidalgo and the United States Constitution guarantees to petitioner non discriminatory rights as to person and property equal to that of Respondent, and equal to and inclusive of those rights set out in

Proposed amendment XXVII to the United States Constitution.

10. Petitioner does not, and can not, request special consideration or treatment by and from this Court. Nor does she claim that as a trial attorney, and not an Appellate attorney, she should be entitled to any special consideration.

It is respectfully suggested that petitioner did all acts in a timely and appropriate manner to assure the delivery to this Court of the forty petitions before December 6, 1978.

The briefs were printed and placed on the carrier, on December 4, 1978, with guaranteed delivery to the Clerk of this Court on December 5, 1978.

One extra day was left for mistake or error. On December 6, 1978 petitioner sent a telegram and requested an extension of time, and thereafter petitioned for such extension.

Even the most experienced of attorneys, in practice before this Court, uses all of the available time allowed in the preparation of the brief and research, and rarely delivers to the Clerk of this Court the briefs in excess of a few days early.

Netither the airmail delivery on that flight, nor any other item, reached its destination as contemplated.

Had that flight, either on December 4, 5 or 6, 1978, crashed, been destroyed or highjacked, requiring reprinting of the petitions, neither petitioner nor any other attorney at law, or human being, could or should be faulted therefor.

Other than reports in the newspapers and news broadcasts, petitioner does not know of her own knowledge, that a storm caused havoc in the area of Chicago, on those days. She has been so advised.

In reading the declaration of the district manager of Airborne, petitioner believed that total destruction had occurred and would require more time than requested in her telegram, from this Court, to reprint the petitions.

Petitioner has, in her petition and this supplemental brief, presented substantial federal questions concerning almost all classifications of personal, separate property, and marital property rights.

It was by action of the California Supreme Court that an extension of time was ordered after the petition for hearing was timely filed. The petition was denied September 7, 1978. In August, 1978, In re Marriage of Stenquist (1978) 21 Cal. 3d 779, was published. That published opinion of the California Supreme Court expressly overruled any implications, which the Phillipson case may have, except on the express facts of that case and §4800(b)(2), where fraud and embezzlement have occurred. The Opinion as published expressly states that there is no interest in a

pension after the death of either spouse, as to the remaining spouse or the heirs.

The express exception is the designation and gift of an annuity remainder to a beneficiary. The designated beneficiary need not be a spouse, and neither the surviving spouse, nor the heirs, have any further interests therein, subject to award, distribution or evaluation by a Court.

Unlike any other community asset, a pension must be evaluated on the apportioned value as between community and separate property, and no interest remains to the surviving spouse after death, unless expressly provided for in the pension plan and agreement. In re Marriage of Stenquist, supra.

This unequivocal statement in Stenquist, purporting to be "local law" is directly contrary to the unpublished Opinion of the Respondent Court. The Opinion was already published at the time petitioner's hearing in the California Supreme Court was denied.

Petitioner was denied the equal application of the law and the privileges and immunities of the citizens of California and the United States by such an unequal application. In petitioner's record and briefs on appeal, is found the same authority and statements as in Stenquist:

> 9th, 14th, 5th Amendment U.S. Constitution;

Griswold v. Conn,
381 U.S. 479 (1965);

Palko v. Conn,
302 U.S. 319 (1937).

Not even on the terms of non existent "local law" can the state action be justified, wherein petitioner is deprived of life, libery, and property.

Petitioner's entitlement to have the pensions determined on the law of the State of California, as published before her petition for hearing in the California Supreme Court was denied, is a substantial Federal Question for this Court.

This summary denial, and refusal, to equally apply the law to petitioner is that intentional action which is prohibited by the supremacy clause of the United States Constitution.

Shelly v. Kraemer
(1949) 334 U.S. 1;

14th, 9th Amendment U.S. Constitution;

Articles I, §10 and VI §2, U.S. Constitution.

If not at this time, in the immediate future, this Court will be compelled to handle, item by item, each of the issues and federal questions presented by petitioner. Before this can be accomplished, as substantial time and money is involved, a substantial number of the Citizens of

California, Citizens of the United States, and Persons, entitled to the privileges and immunities guaranteed by the United States Constitution, will be injured and deprived of guaranteed property and personal rights by prohibited state action.

California has withdrawn itself from the Union of States in its declarations, inferentially and directly, that it is bound only by local law which is not subject to the supremacy clause of the United States Constitution.

The subterfuge of equating those permissible governmental police powers, to legislate as to methods and procedures concerning marriage and dissolution, with those personal and property rights guaranteed by the Federal Constitution, does not create exclusive local law which is not subject to review by this Court, on a claim of prohibited state action.

The denial by Respondent Court, by postcard claiming non reviewable local state grounds, and the Opinion of Respondent Court, In re Marriage of Johnston (1978) 85 Cal. App. 3d 900, at p. 910, which states:

> "The laws relating to marital dissolution are uniquely local in nature. 'The whole subject of the domestic relations of husband and wife...belongs to the States and not to the laws of the United States.' (inner citation, In re Burrus 1890) 136 US 586, 593-594) "Domestic relations is a field peculiarly suited to state regulation and control and unsuited

to control by federal Courts.'"

clearly support California's disclaimer of control, prohibitions and mandates, of the United States Constitution, and the supremacy clause therein.

The supremacy of the United States Constitution, in guaranteeing those property rights, over which the state of California, through its Courts, has claimed plenary control, is found in the California Constitution.

Article I §§ 1, 3, 7, 9, 21, 26;

Article III §1;

see also Kulko v. California Superior Court, ___ U.S. ___, 56 L.Ed.2d 132, 98 S.Ct. ___.

Wherefore, petitioner makes application to this Court and prays that the Honorable Chief Justice, Warren E. Burger, and the Associate Justices of the United States Supreme Court will, in the exercise of their discretion, extend and grant to petitioner the additional time required to file the petition for writ of certiorari, and then consider the substantial federal questions presented in the petition and supplemental brief thereto.

II

CALIFORNIA IS SUBJECT TO THE SUPREMACY CLAUSE OF THE UNITED STATES IN DETERMINING PROPERTY AND PERSONAL RIGHTS

The "uniqueness" of California's laws concerning marital property, separate property, and personal rights therein, is due to the Treaty of Guadalupe Hidalgo (1848) as amended, Articles XIII and IX.

Citizens and residents of California are guaranteed not only the protections from state action ennumerated and implied in the United States Constitution and the amendments thereto, but those additional personal and property rights guaranteed by a Treaty of the United States.

Contrary to the Opinion of Respondent Court, and other Opinions, published, in the state of California, the "uniqueness" does not arise by legislation, judicial decision, nor the California Constitution, which recognizes the very source, the supremacy clause of the United States Constitution, as controlling.

Any reputable legal "casebook" used by law students, in California, as to the subject matter of community property, includes the explanation that at the time California was annexed to the United States the marital property law of the area was the Spanish-Mexican community property

system. This system continued in effect under the Treaty of Guadalupe Hidalgo and the first Constitution of California, the Constitution of 1849.

The Constitutional provision was in a form of a guarantee of the separate property of a married woman and a directive to the legislature to pass laws more clearly defining the rights of married women in "separate" and "common" property.

The first legislature of the State of California put into statutory form the basic principles of the Spanish-Mexican community property system and expressly provided that common law and the law of dower and curtesy should not be part of the California law.

Cases and Materials on California Community Property, American Casebook series, 2d Ed. 1971, introduction;

William Burby, Cases and Materials on the Community Property system;

Schmidt, the Civil Law of Spain and Mexico, Book I, Tit. 1 c. 4(1951);

Miller, Treaties and Other International Acts of the United States of America, 217-219, 241, 242 (1937);

Constitution of the State of California (1849) Art. XI, Sec. 14, Calif. Const. 1879) et seq.

The guarantees of the Treaty promised both married and unmarried women the right to own, enjoy and possess separate property. And, a woman's rights in marital or "common" property was equal to that of her husband.

The concepts of absolute management and control, without interference by the wife, contingent interests, non vested interests, and the right of disposition or possession only on death or, recently, dissolution was not a part of that law.

Wilcox v. Wilcox
(1971) 21 Cal. App. 3d 457.

It was not until this Court in its published Opinions, and the furor created by proposed amendment to the United States Constitution, proposed amendment XXVII, did the California legislature decide that the wife, as originally guaranteed by the Treaty, had equal and existing rights of control and possession to "common" property as did the husband.

§5105 as enacted 1975 Calif. Civ. Code;

Shelley v. Kraemer,
334 U.S. 1;

Stanton v. Stanton,
421 U.S. 7, 43 L.Ed. 2d 688,
95 S.Ct. 1373;

Yiachos v. Yiachos,
376 U.S. 306.

In 1975, the police powers of the state of California no longer required sole management and control by the husband to insure proper business dealings and relationships and those guarantees of the Treaty, ignored to date, were to be reactivated by proposed amendment XXVII.

A. Section 4800(a)(b) California Civil Code Is Vague: Lacks Guidelines and Standards By Which an Equal Division of Community Property Is to be Accomplished, on Dissolution and Improperly Delegates to the Trial Court the Discretion to "Award Any Asset to One Party On Such Conditions As It Deems Proper To Effect A Substantial Equal Division of the Property," and is Thereby Void.

The only property subject to division by a Court in a proceeding for dissolution is the community property.

Robinson v. Robinson
(1944) 65 Cal. App. 2d 118;

Johnson v. Johnson
(1963) 214 Cal. App. 2d 29.

Patently inherent in the statute is the fact that separate trial courts will have different ideas as to what is "proper" and thereby effectuate an unequal

application and construction of the statute and laws, which is not procedural, but would, and does, result in the deprivation of life, liberty and property as to one of the parties.

The observations made by Justice Harlan, in his dissent, in Poe v. Ullman, 367 U.S. 497, at pp. 540, 541,

> ".....Were due process merely a procedural safeguard, it would fail to meet those situations where the deprivation of life, liberty, or property was accomplished by legislation which by operating in the future, given even the fairest possible procedure in application to the individuals nonetheless destroy the enjoyment of all three.
>
> "..... Thus the guaranties of due process, though having their roots in Magna Carta's 'per legem terrae' and considered as procedural safeguards against executive usurpation and tyranny, have in this country become bulwarks against arbitrary legislation.'" (The internal quote is from Hurtado v. Calif., 110 U.S. 516).

The same results ensue without regard to the criminal or civil nature of the legislature.

The supremacy clause of the United States Constitution mandates equality and lack of discrimination in each and every property and personal right, including the liberty to use and

enjoy property, possess property, control property, the right to contract on agreed terms and conditions, attend the school or University of one's choice, if qualified, and the right to be free from governmental intrusions into the privacy of one's home, which without a valid warrant, are unreasonable.

Griswold v. Conn, supra;

Palko v. Conn, supra;

Kelley v. Johnson,
___ U.S. ___, 42 L.Ed.2d 387.

The legislative standards required to effectuate the equal division of marital property include:

a. The requirement that each party be entitled to the proper apportioned share of a fully vested and matured pension as it comes due each month or each period of payment, for the equality of possession, enjoyment and use.

b. The requirement that each party be subject to a risk that a pension not yet mature, and contingent upon occurences not within the control of the employee spouse, and the Court retain jurisdiction over that contingent asset, until maturity or other occurence terminates and prevents maturation.

c. That actuarial life expectancies be prohibited as methods of calculating speculative value. If one party lives even one day longer or one day shorter than speculated, equal division

has not been effectuated.

d. That full disclosure as to the use, location, and amount of community funds be made by the managing spouse, who has maintained the control and management of those funds. That the non controlling spouse need not have the burden of showing the existence of those funds, the location of the funds and assets, and that they are still in existence.

And, that the procedural rights of discovery, easily evaded by the managing spouse, can not terminate in the deprivation of life, liberty and property.

e. That a future contingent interest can not be awarded one spouse and the other awarded an existing asset, which is subject to immediate enjoyment and use. An illusory award which may never come into existence is not equal to an existing asset.

The lace of standards in the statute has resulted in numerous conflicting opinions in the California Appellate Courts as to methods of distribution.

As to petitioner, the lack of standards has resulted in the award to Respondent of all the community assets and most of Petitioner's separate property.

The refusal of the Court to find the value of the High Knoll Home as expressly required in §4800(a)(b) California Civil Code, and the law of

California, and the order of sale of the home with the proceeds to be awarded to Respondent, precludes petitioner from receiving any sum from that sale.

In re Marriage of Knickerbocker
(1974) 43 Cal. App. 3d 103;

In re Marriage of Tammen
(1976) 63 Cal. App. 3d 927.

The lack of standards, other than the delegation to each trial court to do what it deems "proper," has resulted in Respondent receiving about $300,000 in existing and immediate assets, and petitioner receiving the debts and obligations of the community, and a portion of her own separate property which, as it is a contingent remainder, may never accrue.

The supremacy clause of the United States Constitution mandates that legislation contain standards and requirements whereby guaranteed property and personal rights can not be violated by prohibited state action.

Art. VI cl. 2, U.S. Constitution;

Treaty of Guadalupe Hidalgo.

1. The Lack of Guidelines and Standards in Section 4800 Has Resulted in Prohibited State Action Denying Petitioner Her Share of the Mature Asset, The 20th Century Fox Pension Payment of $1083.67 Monthly.

The monthly payment of $1083.67, received and used by Respondent from the date of separation May 15, 1975, exclusively for his own benefit, is easily apportioned as to the separate and community interest and an equal division of that existing asset can be made.

In re Marriage of Stenquist
(1978) 21 Cal. 3d 779.

Petitioner, on the dissolution of the marriage, is entitled to her share, in the amount of about $361 monthly as it comes due, as an owner and not as a creditor.

In re Marriage of Fithian
(1977) 74 Cal. App. 3d 397;

In re Marriage of Johnston
(1978) 85 Cal. App. 3d 900.

Inherent in the right of equal division of community property is the right to equally use the property, enjoy it, possess it, and the liberty to do whatever petitioner's wants to with the property.

Petitioner's right to use, possess and enjoy the property as it comes due and payable each month is equal to that of Respondent.

The State action whereby petitioner is required to wait to some future date, which may never occur, in August 1981, when Respondent is to die, actuarially, and then is to receive a portion of her own separate property in lieu of Respondents receipt of the whole of the Fox Pension, is prohibited by the supremacy clause of the United States Constitution.

9th, 14th amendments U.S. Const.;

Shelley v. Kraemer, supra;

Kelley v. Johnson, supra.

The highly speculative evaluation of that existing asset, which is capable of equal division, denies to petitioner her rightful full share of that property as guaranteed to her by the Treaty of Guadalupe Hidalgo.

Petitioner's rights in the monthly pension payments end on Respondent's death or her own, which ever occurs first; except for her rights under Option #2, exercised by Respondent.

In re Marriage of Stenquist
(1978) 21 Cal.3d 779;

Waite v. Waite
(1971) 6 Cal.3d 461.

Should petitioner die before Respondent, petitioner would receive none of the award of the contingent remainder, which is her own separate property, nor would she have any share of the Fox Pension.

The requirements that division of community property, on dissolution, be equal is compelled by the Treaty of Guadalupe Hidalgo, the United States Constitution, and the amendments thereto.

The lace of standards whereby state action can be exercised to deprive petitioner of her equal monthly share of the Fox pension, with the equal right of possession, enjoyment and immediate use, compels the finding that §4800(a)(b) is void on its face, as construed and as applied.

There is no state interest, either in the police powers or otherwise, whereby those fundamental rights of property interests can be denied to petitioner. Nor is there state law by which property can be taken from petitioner by such prohibited state action.

California is subject to the supremacy clause of the United States Constitution (page 11 c.b., 50, 51 c.b., 54, 64, 65 c.b., 82, c.b.r.h.h.p. c.c.q.)

The only method of equal division of the month monthly Fox pension payment is for petitioner to receive her share, each month, as it is paid directly from the Fox Plan.[2/]

2/ See p. 28.

In re Marriage of Johnston, supra;

In re Marriage of Sommers
(1975) 53 Cal. App. 3d 509, 515.

2/ The uncontroverted facts concerning the vested and matured Fox Pension are set out in the petition for writ of certiorari. For convenience the facts are as follows:

The Fox Pension

The evidence as to the Fox Pension is uncontroverted. In evidence, and record on appeal, is the testimony of the chairman of the plan and the written documents which encompass the employment agreement and the pension plan which is part thereof.

Nine fourteenths, as apportioned between community and separate property, is the community share.

At the time, in May 1974, when Respondent left Fox and went to work at MGM, the requirements had been met and the pension matured. Respondent had the sole and exclusive right to direct the final nature of the plan and unilaterally elected to take option two (2). That plan and option, which was elected in writing by Respondent, and delivered by him to the chairman of the plan, became irrevocable on the commencement of payments under the plan in May 1974 and the delivery of the

(con't p. 29)

Petitioner has neither been awarded any portion of the community assets on dissolution, nor has any division been made. All of the property was awarded to Respondent.

2/ (con't)

written option election, to the chairman.

The final, irrevocable, contract, resulted in the payment of $1083.67 monthly from May 1974, and on the death of Respondent, should she survive him, an annuity of $541.84 Monthly is to be paid to the sole and designated beneficiary, Rosalie L. Morton.

There is no item of record whereby the Respondent Court, in its unpublished Opinion, could state the remainder annuity was of joint and last survivor.

The contract on its face, in the record on appeal, and the chairman of the plan both unequivocally evidence that Rosalie L. Mortion is the sole and designated beneficiary.

Respondent need not have made petitioner the designated beneficiary. He could have elected to have none or to make any other person, at all, the beneficiary and as evidenced by testimony and record on appeal, it need not have been a spouse. The irrevocability of the assignment is evidenced that Respondent, after separation attempted at least three times, with and without

(con't p. 30)

2. The Lack of Guidelines and Standards in Section 4800(a)(b) California Civil Code Has Resulted in the Award to Respondent of Petitioner's Separate Property, the Remainder Annuity Gift in the Fox Pension.

Until the annuity option of the Fox Pension became irrevocable as an assignment in writing,

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2/ (con't)

the help of his attorney of record, to revoke the option, but was advised he could not.

The trial Court evaluated the existing matured asset on speculative actuarial life expectancy of Respondent from March 1975, as to a date of a letter, until August 1981. All of the Fox pension payments, from date of separation in May 1975 to date, and forever, were awarded to Respondent.

The contingent annuity, to come into existence only after the death of Respondent was evaluated on a life expectancy of petitioner of 20.5 years after Respondent's actuarial death.

Respondent was awarded more than one half of that contingent annuity, which may never come into existence, if petitioner does not survive Respondent. Respondent was given the value of

(con't p. 31)

both by the law of California and the express provision of the Fox contract, Respondent alone could direct the ultimate character the pension plan would take.

Waite v. Waite, supra;

In re Marriage of Fonstein
(1976) 17 Cal.3d 738.

Respondent, unilaterally, made a gift of the remainder interest of an annuity to petitioner. This contingent gift was to take effect on his death if the sole and designated beneficiary, Rosalie L. Morton, survived him. He was not required to make such a gift to petitioner and could have made it to any person.

Contrary to the Opinion of Respondent Court, there is no evidence nor statement of record nor in the documents comprising the pension contract whereby it can be stated that the plan is of last and joint survivor.

At page 23 of the reporter's transcript on appeal, Respondent testifies as follows:

"Q. Okay.

2/ (con't)

petitioner's separate property annuity immediately to be paid to him by selling petitioner's home, and his receiving the funds of the proceeds.

The remainder interest, that is designated to Mrs. Morton by the name of Rosalie L. Morton?

"A. It is."

At page 49 of the reporter's transcript on appeal, the Chairman of the plan states as follows:

"Q. What does option two provide for with reference to pension benefits to Mr. Morton and pension benefits to a remainder party?

"A. It provides-- the election provides for a monthly payment to Mr. Morton of $1083.67, and in the event of his death, it goes, the option he elected would go to Rosalyn L. Morton in the amount of $541.84 per month.

"Q. You indicated Rosalyn Morton. How is that spelled?

"A. R-o-s-a-l-i-e. Rosalie. I am sorry.

"Q. That remainder interest is paid to Mrs. Morton for her lifetime.

"A. That is correct.

"Q. Once the election is made and payment start, is the election irrevocable?

"A. Once the election is made and payments start, the election is irrevocable.

"Q. In this case, it is irrevocable?

"A. That is correct.

"Q. If Mr. Morton desired to remove Mrs. Morton from her contingent interest and attempt-ex to receive a higher monthly pension benefit to him, it would not be possible to do so?

"Q. That is correct. It would not be possible."

Sections 1146 and 1148 of the California Civil Code state as follows:

"§1146 Gifts defined. A gift is a transfer of personal property, made voluntarily, and without consideration.

"1148 Gift not revocable. A gift, other than a gift in view of death, can not be revoked by the giver."

A gift during marriage is petitioner's separate property and not subject to the jurisdiction, evaluation, nor award of a court in a dissolution

proceeding.

Article I, §21 Calif. Const.;

§5107 California Civil Code;

Robinson v. Robinson, supra.

Neither Respondent nor his heirs had any rights in that contingent annuity, which contrary to the Opinion of Respondent Court, was as a matter of law an irrevocable assignment and gift of the annuity, to the designated and sole beneficiary, Rosalie L. Morton.

Respondent, unilaterally and irrevocably, transmuted this community interest to Petitioner's separate property.

This Court, by published Opinion, has already decided the Federal Question that the supremacy clause of the United States Constitution prohibited state restrictions on the transmutation of property.

Free v. Bland, supra.

Wissner v. Wissner, supra.

The Treaty of Guadalupe Hidalgo, and its guarantees of a married woman's rights of separate property, preclude state action whereby the separate property is evaluated for Petitioner's life expectancy of over 20.5 years after Respondents' actuarial death, and Respondent is awarded, immediately, over one half of Petitioner's separate property.

Even had the asset been community, neither Respondent nor his heirs would retain rights thereunder, after his death or Petitioner's whichever occured first.

In re Marriage of Stenquist, supra;

Waite v. Waite, supra;

Bensing v. Bensing
(1972) 25 Cal. App. 3d 889.

Equal division of Community property does not include the division of Petitioner's separate property whereby Respondent is awarded her separate property, and the contingent annuity left to her is awarded to her, in part.

A portion of a separate contingent asset can not be awarded in lieu of an existing community asset, and deemed an equal division.

The lack of standards and guidelines in the statute resulting in the abuse of discretion and jurisdiction of the Court, in doing what it deemed "proper" compels the finding that section 4800(a) (b) is void and repugnant to the supremacy clause of the United States Constitution.

The immediate payment to Respondent, by the sale of Petitioner's home, of over one half the value of the contingent annuity, is subject to this Court's consideration as a most substantial federal question, and prohibited state action.

Shelley v. Kraemer, supra.

3. The Lack of Guidelines and Standards in Section 4800(a)(b) California Civil Code Has Resulted in Prohibited State Action Impairing Petitioner's Contractual Rights Under the Fox Pension.

The irrevocable assignment and gift of the annuity remainder created rights in petitioner as a donee beneficiary to the annuity contract.

These rights, having fully matured, could not be changed nor destroyed by state action.

Article I, §10 U.S. Constitution;

Frazier v. Tulare County Board of Retirement
42 Cal. App. 3d 1046 (1974).

The state of California is subject to the supremacy clause of the United States Constitution. The summary refusal of the state of California to adhere to the property and personal rights as guaranteed by the Treaty of Guadalupe Hidalgo, the United States Constitution and the amendments thereto, to Petitioner raises those substantial federal questions warranted of review and consideration by this Court. (pp. 11, 51, 54, 64, 65, 82, 42 c.b., p.h., h, c.p., c.q).

4. The Lack of Guidelines and Standards in Section 4800(a)(b) Has Resulted in Petitioner's Not Being Awarded Any Part of Her Unmature County Pension and the Award to Respondent of Her Separate Property.

Petitioner's County pension is unmatured and subject to many contingencies, not under the control of petitioner.[3/]

3/ The county pension and disposition is set out in the petition for writ of certiorari, but is contained herein for convenience.

Petitioner's unmatured pension, a part of her employment agreement with the County of Los Angeles in the performance of her duties as a deputy district attorney, is found in California government code §§3300 et seq. It is subject to change by state legislation, at any time, until maturation and retirement.

Betts v. Board of Administration
(1978) 21 Cal. 3d 859.

The rule of French v. French (1941) 17 Cal. 2d 775, whereby a pension, not yet matured at time of dissolution, was not subject to division and award on dissolution was overruled by In re Marriage of Brown (1976) 15 Cal. 3d 838, just

(con't p. 38.)

The refusal by the Court to apportion the pension, as required by the law of California, and

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3/ (con't)

before the trial in this matter. For convenience the facts of the County pension are set forth.

The County Pension

Petitioner commenced employment with the County of Los Angeles in or about May of 1970. Participation in the pension plan is a mandatory condition of the employment. Contribution by the employee is required, and at the time of separation there was about $10,000 of employee contribution in the fund which could not be withdrawn unless petitioner quit.

The testimony of the administrator of the plan and the plan and employment agreement, exhibits of record on appeal, are uncontradicted.

Participation in the plan commenced in May 1970 and the pension will not mature until there has been ten consecutive years of service with the County and the employee reaches the age of 55.

Petitioner, the employee, has the sole and exclusive right to direct the character of the plan. The election can be made after the ten years of continuous service. Petitioner has the sole and exclusive right to determine the beneficiary, if any under the plan, or to determine none. Any

(con't p. 39)

the supremacy clause of the United States Constitution, has resulted in Respondent receiving not

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3/ (con't)

number of contingencies, including legislative change in the plan, death of petitioner, leaving county service, illness and the taking of work related compensation, or other contingencies, could prevent maturation.

The law of California provides that a pension must be apportioned as to the community and separate property interests. Under the formula set forth by the Courts five tenths (1/2) to amount of $220 monthly, which would result if maturation occurred in May or June of 1980, is the community interest. Respondent would be entitled to one half of the community share of $110 each month as it came due, or about $55 monthly.

The Court evaluated the unmatured pension on petitioner's life expectancy of over 20.5 years after Respondent's death. The court refused to apportion as to community and separate interest, and awarded to Respondent one half the amount actuarially calculated. Respondent is to receive his share immediately through the sale of petitioner's home and his receipt of the proceeds.

By the terms and obligations of the contract of employment, Respondent has no right or interest in the contract, and is not a party thereto.

one half the community interest in the pension, but one half of petitioner's separate property interest, one half of the community interest and one fourth of Petitioner's community interest.

The lack of statutory standards permitted this prohibited state action, as the Court deemed it "proper."

Respondent has no right to share in that unmatured pension after his death. His demand that the pension be evaluated on actuarial tables of life expectancy was predicated on his urging on the Court that he was entitled to one half of the pension evaluated on petitioner's life, of over 20.5 years after his death actuarially in August 1981.

The supremacy clause of the United States Constitution precludes and prhoibits such an award and disposition.

Apportionment must be made as to community and separate property interests. The same formula for apportionment as was used for the Fox Pension must be utilized.

In re Marriage of Stenquist, supra.

Respondent's rights by way of actuarial tables and his own claim that he will die, actuarially, in August 1981, requires that the pension which will not mature until June 1980, assuming contingencies do not prevent maturation, be evaluated as five tenths (1/2) community as to the payment of $220 in June 1980, or $110. He would then be entitled

to one half that amount for the months he would live until August 1981. The date for commencement of evaluation would be the date of maturation, June 1980, wherein he would be entitled to less than $900.

In re Marriage of Stenquist, supra;

In re Marriage of Wilson
(1974) 10 Cal. 3d 851.

Contrary to the unpublished Opinion of Respondent Court, neither Respondent nor any of his heirs, as a bank account or with any interest at all, is entitled to share in the County pension after Respondent's death.

Thereafter it is petitioner's sole and separate property.

In re Marriage of Stenquist, supra.

The Opinion of Respondent Court and its reliance on Phillipson v. Board of Administration is not warranted nor the correct statement of the law. The California Supreme Court, In re Marriage of Stenquist, supra, expressly states that the reasoning of Phillipson is not applicable and that no right exists in a pension after death.

Further the limitation on Phillipson to its facts, where the pension was mature, but the husband, who had taken all the other community and separate property assets and left the state with his mistress, had neglected to designate which option was to be invoked, required the Court to invoke the option whereby the guiltless spouse

received all of the pension.

§4800(b)(2).

The supremacy clause of the United States Constitution prohibits state action whereby Petitioner's separate property guaranteed to her by the Treaty of Guadalupe Hidalgo and the United States Constitution is taken by a proceeding in dissolution.

9th, 14th Amendment, U.S. Const.;

Article VI cl. 2, U.S. Const.

Both parties must bear the riske that an unmatured pension will not mature. Equal division precludes the award to Respondent of an immediate share of the unmatured pension by the sale of petitioner's home, and his receipt of the proceeds, wherein Petitioner alone must bear the risk that the pension will not be changed by statute, she will not die, she will not be fired for cause, she will not become ill, or the pension will not mature due to unknown contingencies.

Since the landmark decision in 1976, that an unmatured or contingent pension is an asset to be divided equally on dissolution, In re Marriage of Brown (1976) 15 Cal.3d 838, the Supreme Court of California has cautioned against the use of speculative actuarial tables to effectuate an immediate division.

In re Marriage of Skadon
(1977) 19 Cal.3d 679.

The division other than by the retention of jurisdiction by the Court until the pension matures and Respondent then would receive the sum of $55 monthly until his death, or the resolution as determined In re Marriage of Jafeman (1972) 29 Cal. App. 3d 244, wherein Respondent could receive one half of the employee contribution made during the marriage, or about $5000 as a set off against another existing community asset, is prohibited state action and a denial to petitioner of her rights guaranteed by the supremacy clause of the United States Constitution.

5. The Lack of Guidelines and Standards Has Resulted in the Prohibited State Action of Impairment of Petitioner's Contractual Rights in the County Pension Which Is Unmatured.

By reason of the employment agreement, Petitioner alone has the sole and exclusive right to direct the final character of the pension plan.

At the time of maturation, she may elect an option, she may designate a beneficiary, and she, exclusively may make any decision as to the rights and obligations under the contract of employment.

Allgeyer v. Louisiana,
165 U.S. 578, 589 (1987).

Respondent is not a party to that employment contract and has no rights nor duties thereunder.

The unpublished Opinion of Respondent Court whereby it is stated that the trial court can make, even before the time has arrived for election, the determination as to the rights and benefits of the employment contract, and can grant and give all of the benefits to Respondent is prohibited state action, and void.

Art. I §10 U.S. Constitution.

The State of California is subject to the supremacy clause of the United States Constitution. There is no state interest nor police power which can impair Petitioner's rights under the employment contract, where, the employment is lawful, as it is here.

B. The Refusal of the Court to Follow the One Directive Set Out in Section 4800(a)(b), To Value All Assets As of the Time of Trial or Before Trial, Has Resulted in the Taking of and Sale of Petitioner's Separate Property Home, and the Award to Respondent of the Proceeds of Sale.

The sole standard required of a Court by statute, whereby community assets and obligations must be evaluated before trial to accomplish

the equal division of community property, was refused and ignored by the trial Court.

In re Marriage of Knickerbocker
(1974) 43 Cal. App. 3d 103.

The uncontroverted evidence is clear that Petitioner, during separation, paid community debts to the IRS, store bills, all of the first and second mortgage payments on the High Knoll Home, the taxes on the property, the insurance, the costs of repairs and replacement of appliances, and all structural repairs necessitated by land slippage.

The trial Court refused to make a finding, though requested by Petitioner, as to the amount of reimbursement she was entitled by the use of her separate property funds.

Calif. Civ. Code §5118;

In re Marriage of Smith
(1978) 79 Cal. App. 3d 725.

Such denial of reimbursement for the use of separate property after separation is a denial of the equal protection and application of the law.

In re Marriage of Bouquet
(1976) 16 Cal. 3d 583.

Although requested by Petitioner, the trial Court refused to find a value as to the High Knoll Home.

The home was merely ordered sold, with the proceeds of sale to be given to Respondent after the mortgages are paid, and he is paid for any reimbursements he may have when the interlocutory judgment becomes final.

Contrary to the law of California, the trial Court authorized the taking of additional testimony to provide Respondent with a vehicle whereby he can receive the whole of any separate property or community assets available.

After the interlocutory judgment of dissolution has been entered, the Court may retain jurisdiction for further proceedings concerning spousal support, child support, or the administration of an unmatured pension plan, and nothing further.

In re Marriage of Van Sickle
(1977) 68 Cal. App. 3d 728.

(pp. 11, 28, 42, 51, 30, 54, 64, 65, 82, c.b.: p.h., h, c.p. c.q.)

Not only must the requirements that value be determined before the trial, to know the amount to be divided equally, be adhered to, but findings as to the amount of community debts paid with separate property, after separation must be made.

Absent this, petitioner was deprived of her separate property, and the speculation as to value which, due to the order of sale, resulted in Respondent receiving the proceeds from sale.

In re Marriage of Knickerbocker, supra;

In re Marriage of Smith, supra;

In re Marriage of Tammen
(1976) 63 Cal. App. 3d 927.

The argument that such procedural rules are exclusively within the state police powers, can not be sustained, when, as in this case the result is deprivation of life, liberty and property.

9th, 14th amendment U.S. Const.;

Shelley v. Kraemer, supra;

Kelley v. Johnson, supra;

Poe v. Ullman, supra.

C. The Application of the Incorrect Presumption in Section 5110 California Civil Code and the Unequal Application and Construction of That Statute Has Resulted in the Taking of Petitioner's Separate Property Home, the Sale Thereof, and the Proceeds Awarded to Respondent.

The establishment of presumptions, rules of evidence, and the burden of proof is within the regulation of the state of California.

In California, since 1965, a presumption has nott been evidence and therefore can not sustain a judgment, as proof.

Section 600 of the California Evidence Code states as follows:

> "§600. Presumption and inference defined. (a) A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. (b)....."

The face of the 1973 deed by which the High Knoll Home was acquired, and of which a certified copy is in evidence and in the record on appeal, states that such property was granted to:

> "..... Maurice R Morton and Rosalie L. Morton, husband wife, as joint tenants, not tenants in common, not community property."

And, section 5110, 5107, 5104 and 5103 state:

> "§5110: [Other real property situated in this state and other personal property acquired during marriage: Presumptions.] Except as provided in sections 5107, 5108, and 5109 and Subdivision (c) of section 5122, all real property situated in this state--acquired during the marriage be a married person while domiciled in this state----is community property: but whenever any real or personal property, or any interest therein or

> encumbrance thereon, is acquired prior to January 1, 1975, by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if so acquired by such married woman and any other person, the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; except, that when any of such property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument [emphasis added] the presumption is that such property is community property of said husband and wife."
>
> "§5107 [Wife's separate property, and conveyance thereof] All property of the wife, owned by her before marriage and that acquired afterwards by gift, bequest, devise, or descent with rents issues and profits thereof, is her separate property. The wife may, without the consent of her husband convey her separate property."
>
> "§5104 [Joint Ownership or Community property] A husband and wife may hold property as joint tenants, tenants in common, or as community property."
>
> "§5103 [Property transactions between spouses or with other person governing confidential relations.] Either husband

of wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by Title 8 (commencing with section 2215) of part 4 of Division 3."

Contrary to the express provisions of §5110 (all references to sections are to the California Civil Code, unless stated otherwise) Respondent Court, in the unpublished Opinion applied the incorrect presumption to the face of the deed. Respondent Court states that the face of the deed raises the presumption that the property is community property, and further states that Respondent could use his secret intent and fraud to declare the intent of the parties.

Both of the statements, both as to fact and law, are incorrect.

The record on appeal, including the reporter's transcript, documents and exhibits of record, petitioner's briefs on appeal, and Respondent's reply brief, in which he admits that he did not overcome the presumption on the face of the deed, but that petitioner did, is without contradiction.

Respondent by his testimony stated that he and his business manager, Lee Winkler, who contrary to the Opinion of Respondent Court, as shown by the testimony of record in the reporter's

transcript (p. 768), was not Petitioner's business manager, demanded to and did exclusively handle the escrow and purchase of High Knoll. (Exhibit "A" - Deposition of Respondent.)

Respondent Court, in its unpublished opinion, refers to the testimony of Winkler wherein he states the community did not have the funds or money to purchase High Knoll.

At page 260 of the reporter's transcript, an exchange between the Court and Respondent is found as follows:

"The Court: The thing I don't understand is why did you keep hitting the bank for these loans? You had income, she had income, what was the problem?"

"Respondent: Your Honor, that's the reason why I retained Mr. Winkler. I could not control the expenditures of money or our taxes that were present during those years. We were in debt from the very day we married. We never got out of it." [emphasis added]

Winkler was not retained nor consulted until February of 1973, almost ten (10) years after the marriage. (Reporter's Transcript p. 260.)

The insolvency of the community, during the whole of the time the marriage existed, was further testified to by Denise Kahn, Respondent's witness, an employee of Winkler. (Reporter's Transcript, pp. 573-589).

The lack of any evidence to support the trial Court, was pointed out again and again to Respondent Court. There is no evidence, competent nor otherwise, by which Respondent Court, in the unpublished Opinion, can make the statement that evidence exists. (p. 30 c.b.)

Further, the testimony of Esther Kascle, an attorney at law, with a masters degree in Tax from the University of Southern California School of law and a licensed Certified Public Accountant, testified unequivocally that from the date of its inception, the community was insolvent and near bankruptcy. The only funds available for the purchase of High Knoll were the separate property funds of petitioner. These funds were traced to the sale of Petitioner's Canfield home, owned before marriage to Respondent and received as an award by Court judgment in her prior divorce proceedings, and the rents issues and profits of similar separate property. (Exhibits G, D, J, L) (R.T. pp. 806-817).

These funds had been placed in separate savings accounts by petitioner on the receipt thereof, and not only had the separate property not been commingled with community property, but had not been commingled with each other.

Esther Kascle traced these separate property funds directly from the separate property asset to the purchase of High Knoll and deposit in escrow in July and June of 1973 (R.T. 587-590).

There is no credible evidence of record that the community received a refund of $10,000 in taxes in 1973. Instead, the IRS record clearly states that an audit occured as to the 1972 tax

liability concerning Respondent's alleged support payments to his ex wife. The additional payment required by that audit was made by Petitioner, after separation, by IRS deducting the sum from her income tax refund. Whereby she paid this community debt with her separate property and was denied reimbursement therefor.

In re Marriage of Smith, supra;

Calif. Civ. Code §5118.

Moreover the testimony of both Winkler and Esther Kascle that before and after 1973, the community debts far exceeded any asset, including an alleged refund, precludes community assets as a source of acquisition. Respondent, personally testified that in 1974 he was in debt in the amount of $20,000. However, no disclosure was made as to the reason, the disposition of the funds, nor the use to which they were put.

Also totally absent is any evidence, nor did Respondent so contend, that Petitioner intended to give Respondent any part of her separate property as a gift. To the contrary, both Respondent and his secretary, Rose Branz admitted the forgery of petitioner's signature whereby separate property of petitioner was obtained without her knowledge and/or consent, and the title to High Knoll was taken in joint tenancy rather than as her sole and separate property, as she directed the escrow officer (R.T. 420-424).

The presumption, which arises from the face of the 1973 deed is that the property is joint

tenancy, and separate property not subject to the jurisdiction in a court of dissolution.

In re Marriage of Robinson, supra.

Neither Respondent's secret intent to take title in joint tenancy and appropriate petitioner's separate property, nor his assertion that community funds were used in the acquisition, is adequate to overcome that presumption.

In re Marriage of Frapwell
(1975) 49 Cal. App. 3d 597;

Gudelj v. Gudelj
(1953) 41 Cal. 2d 202;

Hansford v. Lasser
(1975) 53 Cal. App. 3d 364.

Had, in fact, a community asset been used for acquisition, the published Opinion of this Court, prohibiting restrictions by state action as to transmutation of property, would have compelled the finding that the supremacy clause of the United States Constitution guaranteed petitioner her separate property rights in her home.

Free v. Bland, supra;

Wissner v. Wissner, supra.

The device of designating a presumption as "procedure," whereby prohibited state action is permitted by California, where the action results in the taking of life, liberty and property, has not

yet been agreed to by this Court as permissible State action.

Western & Atl. R. Co. v. Henderson,
279 U.S. 639 (1929);

Manley v. Georgia,
279 U.S. 1, 7 (1929);

Shelley v. Kraemer, supra;

Morrison v. California,
288 U.S. 258 (1933)

Morrison v. California,
291 U.S. 82 (1934).

Petitioner could, by the use of either of two methods, overcome the presumption of joint tenancy on the face of the deed, to wit:

a. evidence of the insolvency of the community at the time of acquisition

b. the use of separate funds traced to the acquisition.

In re Marriage of Mix
(1975) 14 Cal. 3d 604;

In re Marriage of Jafeman, supra;

In re Estate of Murphy
(1976) 15 Cal. 3d 907.

Both methods of proof, without contradiction, are of record. High Knoll is petitioner's sole and separate property, acquired by the non-commingled, separate property funds, and rents issues and profits therefrom, owned prior to her marriage with Respondent.

Whether or not a joint tenancy or separate property could be found the same result would ensue and a court in dissolution would be precluded from disposing of High Knoll by sale, aware, or otherwise.

In re Marriage of Kitscher
(1978) 79 Cal. App. 3d 527.

Petitioner's burden of proof as to Respondent's forgery, fraud and embezzlement, both by himself and his secretary, is not heavy (R. T. 228-237).

Respondent's own admissions, and testimony of record and that of Rose Branz, is more than adequate (R. T. 800-801; 465-490; 615).

Liodas v. Sahada
(1977) 19 Cal. 3d 278.

This uncontradicted breach of a fiduciary duty, as a matter of law, renders Respondent a constructive trustee for Petitioner, both as to High Knoll and the unaccounted for community funds in an amount of over $300,000 (R. T. 294-296; 800; 801).

Calif. Civ. Code §§ 2223, 2224.

The supremacy clause of the United States Constitution guarantees Petitioner's rights to her separate property. Prohibited state action by which she is deprived of her home by sale and the proceeds delivered in total to Respondent presents a substantial Federal Question to this Court. (pp. 11, 28, 30, 51, 54, 64, 65, 82, c.b.:p.h., h, c.p., c.q.)

Respondent's reply brief consisted only of the bald conclusion without any specific designation in the record, or documentary support that the Interlocutory Judgment was supported by substantial evidence. Respondent's purported authority for his position as cited on page 6 of Respondent's Brief (Fountain v. Maxim and Williams v. Williams), have no application at bar; because, the facts are not analogous. Both cases deal with the presumption created by former §164 of the Civil Code, that property acquired during the marriage is presumed to be community, which presumption is rebuttable; but, the burden of proof to rebut such presumption rests on the party asserting that the property is not community.

In Williams v. Williams (1971) 14 Cal. App. 3d 560, 565, the Court stated:

> "(4) It is incumbent upon the parties to an appeal to cite the particular portion of the record supporting each assertion made. It should be apparent that a reviewing court has no duty to search through the record to find evidence in support of a party's position."

which Respondent has not done.

An example of Respondent's general course of conduct is found by noting that in August of 1975, after the separation and after this action was filed in May of 1975, but before the trial in this matter in August of 1976, Respondent executed and recorded a notarized deed which states:

> "Maurice R. Morton, quitclaims, conveys, transfers, assigns and delivers all and any right title and interest in the real property 15601 High Knoll Road, Encino, California to IRWIN R. MILLER, IN TRUST FOR CAROLYN ROSALES." (emphasis added and total deed not included)

Neither Respondent nor his attorney of record, Irwin R. Miller, advised the trial Court nor petitioner of the transfer or the deed.

Petitioner first discovered this deed in July 1978 when she ordered a certified copy of the High Knoll deed as an exhibit to the petition for rehearing. A certified copy of the 1975 deed was annexed to the petiton for rehearing and to the the petition for hearing in the Supreme Court of California.

Although petitioner had heard that Respondent was going to attempt to assign a portion of her home to another person but intended to keep a life estate, she could not find any evidence of such a transaction (C. T.).

The concealment from petitioner and the trial court of the existence of the 1975 deed, not only denied jurisdiction to the Court over the property,

as Respondent had no interest therein, and indispensable parties had not been joined, but deprived petitioner of a defense and thereby a fair trial with procedural and substantive due process, as mandated by the United States Constitution and the amendments thereto.

Had High Knoll been community property, the transfer before trial would have converted the property to tenants in common, and petitioner's separate property, not subject to the jurisdiction of the Court.

In re Marriage of Kitscher, supra;

Green v. California, supra.

This Court, by published Opinion, has already decided the Federal Question which prohibits state action in unequal application of the laws of evidence whereby a trial on its merits is prevented.

Respondent Court decided that Federal Question contrary to the directives of this Court.

Green v. Calif.,
399 U.S. 159 (c.b. p. 30)

D. The Supremacy Clause of the United States Constitution Prohibited the State Action Whereby Petitioner's Separate Property Insurance Policy, of Which She Is Owner and Beneficiary Could Be Awarded to Respondent.

Respondent Court, in the unpublished Opinion, neither mentioned petitioner's contention that the Equitable Life Assurance Company policy, of which petitioner was the sole owner and beneficiary, and which produced semi annual dividends, could not be awarded to Respondent.

At page 27 of the reporter's transcript on appeal, Respondent answered questions by his counsel of record as follows:

"Q. Who is the owner and beneficiary of the $50,000 term policy with Equitable?

"A. Mrs. Morto[illegible]."

In the record on appeal is the exhibit of Respondent's holographic will, in which he states that all insurance policies are petitioners and that they were paid for by her sole and separate property. (Exhibit "BBB.")

His testimony, of record, is that he intended and meant exactly what was said in that will, which had been delivered to petitioner at the time he wrote it.

Whether the policy is a transmutation, which can not be restricted by state action, as already determined by published Opinion of this Court, or it is Petitioner's separate property, per se, the trial court still would have no jurisdiction thereover.

The supremacy clause of the United States Constitution must prevail to prevent prohibited State action which denies petitioner the right to her separate property, guaranteed to her by the Treaty of Guadalupe Hidalgo.

9th, 14th amendment U.S. Const.

The theory, by which the trial Court could determine the policy was without value and thereby could award it to Respondent, has not been discussed, considered nor disclosed by Respon dent Court in the unpublished Opinion.

The guarantees of the Federal Constitution compel this Court to consider the substantial Federal Questions presented. (pp. 11, 28, 30, 51, 54, 64, 65, 82 c.b.:p.h., h., c.p., c.q.)

E. Misuse of Judicial Power Where Not Required by State or Police Power Legitimate Interests Is Prohibited State Action Under the Supremacy Clause of the United States Constitution.

This Court, by published Opinion, has already decided the substantial Federal Question that Judicial action, which impairs the privileges and immunities of Citizens of the United States or, which injures them in life, liberty, or property without due process of law, or denies to them the equal protection of the law is void.

Shelley v. Kraemer, supra.

State responsibility is not cleared by the fact that Respondent Court was not authorized by statute to deny petitioner her share of the Fox pension equally as it was paid as Respondent; take from her the separate property contingent annuity remainder; take from her her home; take from her the separate property interest in her unmatured County pension, and provide and change the contractual guarantees of the contract of employment.

Yick Wo v. Hopkins,
118 U.S. 356 (1886)

Only the misuse of power and the failure to follow the law equally, or at all, caused the damage to petitioner's property rights which are protected by the United States Constitution.

The taking of the insurance policy without authority or discussion is violative of Constitutional prohibitions.

United States v. Classic,
313 U.S. 299, 326 (1941);

Art. IV §2 United States Constitution;

14th Amendment §1 U.S. Constitution.

1. Refusal to Apply the Law As Required in Section 5125 California Civil Code Is Prohibited State Action.

Respondent admitted that he gave to his adult 30 year old divorced daughter, who would not work, at least three cars, paid all of her living expenses, medical and dental expenses, insurance, and gave her a weekly sum of that like he paid his ex wife for support, which sum was designated as $150 weekly.

Contrary to the unpublished Opinion of the Respondent Court, petitioner neither knew about the gifts nor did she consent to the gifts (R.T. 116-118; 232-237; 326; 327; 435-437; 787, 981).

There is no evidence of record to support the unpublished Opinion of Respondent Court.

Denise Kahn, an employee of Respondent's business manager, testified that Petitioner kept asking her where the money was going, questioned her about gifts to the adult daughter, and was suspicious.

Section 5125 of the California Civil Code requires a writing in consent of such a gift be the evidence of intent. There was no such writing at bar.

Respondent Court, to sustain the statement of the trial court that it seemed all right to have Respondent give what he wished to his daughter, and the trial Court knew no reason why he could not do so, in its unpublished Opinion, states that petitioner is estopped to demand the writing. Such authority for such Opinion is an old case concerning partnership law where both partners had equal management and control of the assets.

In no way, as the Opinion suggests, does the case cited concern itself to management and control of community assets by Respondent which was mandatory as to petitioner.

The evidence of a writing is required as consent to such a gift to prevent the deprivation of property to petitioner on dissolution.

In re Marriage of Hopkins
(1977) 74 Cal. App. 3d 591.

California Civil Code §5125(b) states as follows:

> "(b) A spouse may not make a gift of the community property without a valuable consideration, without the written consent of the other spouse."

Petitioner is entitled to reimbursement of her separate interest in community property given as a gift of at least one half of the over $75,000 given by Respondent to his adult daughter (R. T. 483-499).

Fields v. Michael
(1949) 91 Cal. App. 2d 443;

Vai v. Bank of America
(1961) 56 Cal. 2d 329.

2. The Refusal to Require Respondent to Account for Community Funds and the Requirement That Petitioner Prove Where the Unaccounted For Funds Were, How They Were Used, and That They Still Existed, Was Prohibited Judicial Action.

Respondent refused to produce bank and business records, kept exclusively by himself and his secretary. He and his secretary were the only persons who were signatories to accounts carried by Respondent to which Respondent deposited some of petitioner's separate assets. The records were kept at his business location (R. T. 228-237).

Petitioner did not know where the accounts were, which banks were used, or what disposition had been made of the proceeds.

Respondent refused, although served with a demand pursuant to §§ 1985(b)(c) of the California Code of Civil Procedure, to produce the records as demanded (R.T. 294-296).

Respondent produced no records for Bank of America, at which he testified such account was still in existence; produced minimal records for Union Bank, only up to 1972; produced business records of Winkler, in Court, which Esther Kascle testified were substantially different in kind and substance, than those shown to her at Winkler's office, purporting to cover the same items (R.T. 466-474; 560).

The Fox records, subpoenead by petitioner evidenced sums amounting to more than $24,000 at termination and other large amounts which were not accounted for (R.T. 467-469; 498-499; 616-617).

Testimony from the head of the accounting department at Fox noted that there were very few such checks covering termination pay and that when he went to get such cancelled checks, pursuant to the subpoena, he found that the large check issued to Respondent could not be found. (p. 5 of Exhibit LLLL.)

As vice president of business affairs and administration, the accounting department and the cancelled checks were under Respondent's control (Exhibit LLLL).

At one point in time, counsel for Respondent mentioned over $19,000 in stocks, also not accounted for (R.T. 914) (Exhibit LLLL, 2, 3).

The trial Court refused to permit impeachment of Respondent by the use of his own signed letters and business documents, or to permit such items to be entered in evidence. (Exhibits HHH, III, JJJ, KKK, KK, FF, Q, R, A, B, C, F, G, H, I, K, M-QQQ.)

Petitioner had received, from a friend at Fox, a box of records which had been marked "trash" and which Rose Branz identified as having been cleaned out of Respondent's office and having been left with her for destruction (R.T. 970-971).

By reason of the foregoing, petitioner was deprived of a fair trial as required by the due process and equal protection clauses of the United States Constitution. These Federal Questions, by published Opinion, have already been decided by this Court.

Calif. v. Green,
399 U.S. 159.

By the law of California, and the leading case which is a decision by Respondent Court of Appeals of the State of California, Second Appellate District, Division One, Williams v. Williams, (1971) 14 Cal. App. 3d 560, Petitioner need only show that by Esther Kascle's accounting, sums of community assets of over $200,000 were unaccounted for (R.T. 483-499).

Thereafter Respondent had the duty to account and to state the precise use and location of the assets. (pp. 11, 30, 51, 54, 64, 65, 82, 42 c.b.: p.h., h. c.p., c.q.) (Exhibit A-QQQQ, 2-10 incl.)

Ames v. Ames
(1976) 59 Cal. App. 3d 234;

Weinberg v. Weinberg
(1967) 67 Cal. 2d 557, 563.

Reimbursement for at least one half this sum is guaranteed to petitioner by the supremacy clause of the United States Constitution.

3. State Action Can Not Prevent Petitioner's Access to This Court.

Respondent Court's refusal to grant a Stay of proceeding or to set an amount whereby a Stay Bond could be posted, refusal to Honor the original Stay, which was never dissolved, the refusal to certify the Constitutional Questions on Appeal, and the denial that California is subject to any law other than the local law results in Petitioner being denied access to this Court.

This substantial Federal Question, if nothing else, should be considered and determined by this Court.

Boddie v. Connecticut,
401 U.S. 371 (1971).

III

CONCLUSION

STATE ACTION DEPRIVING PETITIONER OF A SUBSTANTIAL RIGHT IS REVIEWABLE BY THIS COURT UNDER THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

Either a law or action by the state which deprives a person of a protected right must be held invalid, even were a legitimate governmental interest involved.

Whether the state action, as to Petitioner, was due to misinformation, the desire to protect the interlocutory judgment of the trial Court, general dislike of prosecutors in the County of Los Angeles, or even dislike of Petitioner, is not what is relevant or meaningful.

It is for these very reasons that review by this Court is compelled when guaranteed rights and protections have been violated by state action.

The unbiased equal application and protection of the laws and the guarantees of life, liberty and property, must be equally dispensed to the saint as well as the most gross criminal.

All persons, men, women, and children, as well as ficticious "persons" are entitled to receive those personal and property rights guaranteed by the Constitution.

The Treaty of Guadalupe Hidalgo has given those women domiciled in California personal and property rights over and above rights afforded in other States and other community property states.

From the inception, the intention was to make those rights equal to rights afforded the husband and the men in California.

If proposed amendment XXVII should ever become a part of the Constitution of the United States, then all women in the United States will be entitled to equal treatment with the men.

In California, it has taken over one hundred years to come near to what the Treaty guaranteed in 1848. Some of the slowness of action is due to the substantial work and cost involved to apply to this Court.

Resistance accounts for a great deal.

It is only this Court which is capable of setting the appropriate standards and determining the substantial Federal Questions presented.

Respect for the integrity and dignity of the court system and judiciary is a requirement fundamental to the United States Constitutional system of Government.

The absolute deprivation and destruction of Petitioner's community and separate property rights, guaranteed to her by the United States Constitution, compels consideration by this Court of those basic and fundamental Federal Questions presented.

Palko v. Conn, supra.

Respondent court can not ignore those published Opinions of this Court, and decide federal questions on the premise that the Supremacy Clause of the United States Constitution does not bind or control California which acts and is entitled to act on strictly "local" law.

The United States Constitution, and the Supremacy clause therein, controls the State of California as it does every other state in the Union.

Wherefore Petitioner Prays that the Honorable Chief Justice, Warren E. Burger, and the Associate Justices of the United States Supreme Court, will permit the late filing of the Petition For Writ of Certiorari and will consider and determine the substantial Federal Questions presented by Petitioner herein.

For the reasons aforesaid, it is respectfully prayed that a writ of certiorari be granted to review the judgment of the Court of Appeals, Second Appellate District Division One.

Respectfully submitted,

ROSALIE L. MORTON

Attorney for Petitioner
In pro se

APPENDIX A

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

SEP 7 1978

I have this day filed Order

HEARING DENIED

In re: 2 Civ. *No.* 52725

In re Marriage of Morton

vs.

Respectfully,

G. E. BISHEL
Clerk

APPENDIX B-1

IN THE SUPREME COURT OF THE

UNITED STATES

In re Marriage of Morton	)	October
	)	Term
ROSALIE L. MORTON,	)	1978
	)	
Petitioner,	)	No._____
v.	)	
	)	
SUPERIOR COURT, LOS ANGELES COUNTY, STATE OF CALIFORNIA COURT OF APPEAL, STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE, SUPREME COURT OF THE STATE OF CALIFORNIA,	)	DECLARATION OF ROBIN J. SHERBURNE
Respondents,	)	
MAURICE R. MORTON,	)	
Real Party in Interest.	)	

I, Robin J. Sherburne, declare as follows:

1. That I am the office manager of Westside Law Publishers, Inc., 606 Wilshire Boulevard, Santa Monica, California.

2. That on December 4, 1978, I gave a package containing 40 copies of a Petition for Writ

of Certiorari and one copy of a Motion for Stay on Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District, along with proofs of service by mail thereof, on behalf of Rosalie Morton, attorney-at-law and petitioner herein, to an Airborne Freight Corporation employee, Mr. Jay Walsh, at the hour of 6:10 p.m., for delivery to the United States Supreme Court on December 5, 1978. The above referenced brief was required to be filed by the Clerk of the United States Supreme Court on December 5, 1978.

3. I was informed by a representative of Airborne that this parcel was dispatched by special airfreight handling by Airborne Freight Corporation, and was to be hand delivered to the Clerk of the United States Supreme Court in Washington, D.C.

4. I was further informed by an Airborne representative that the package containing the briefs was hand delivered by another Airborne employee to the TWA counter to be placed on flight No. 78 to Washington, D.C., National Airport, where it was to be picked up by another Airborne employee and hand delivered to the United States Supreme Court. This shipment bore the bill of lading No. LAX 6658257. Flight 78 had a stop over at O'Hare Airport in Chicago.

5. That we used the services of Airborne Freight Corporation on a continuing basis in the past few years, and each time we used special handling services which would guarantee delivery from Los Angeles, California to the United States

Supreme Court in less than twenty-four hours.

6. On December 6, 1978 I was informed by Geri Marchegiano, a customer service representative of Airborne Freight Corporation, that she did not have the proof of delivery information, as there were several flight schedules that had changed due to weather conditions, and that our parcel was probably sent via another airline or another flight on to National Airport in Washington, and that they would not receive the dispatch information from their computer until they learned what flight the parcel was diverted to.

7. Later in the day on December 5, 1978, I telephoned Airborne Freight Corporation's local offices to find out if we were able to receive a proof of delivery yet to the Clerk's of the United States Supreme Court. I was informed by Ms. Marchegiano that Flight 78 was delayed from landing in Chicago due to adverse weather conditions, i.e., 22 inches of snow on the runway at O'Hare Airport. This Flight No. 78 was to proceed after changing planes at O'Hare Airport to National Airport in Washington, and was scheduled to arrive in Washington at 9:10 a.m. on December 5, 1978.

I was further informed by Ms. Marchegiano on December 5, 1978 that an Airborne Freight employee was attempting to claim the parcel at O'Hare Airport, and was unable to recover the package from TWA Airlines. This parcel has still not been located by either TWA or Airborne Freight Corporation.

8. Several Airborne Freight employees have been diligently working with me to locate this package.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Monica, California on December 7, 1978.

/s/
Robin Joy Sherburne

APPENDIX B-2

December 7, 1978

Ms. Rosalie L. Morton
15601 High Knoll Road
Encino, California 91436

In Re Marriage of Morton Petition For Writ of Certiarara

I, Len Piazzon, District Manager of Airborne's Los Angeles terminal do hereby declare the following:

1. Our driver, Jay Walsh, picked up a package (LAX 6658257, 10 pounds) at 1810 on December 4, 1978, from Westside Law Publishers, 606 Wilshire Blvd., Santa Monica, California for delivery to the Clerk, U. S. Supreme Court, Washington, D. C. on December 5, 1978.

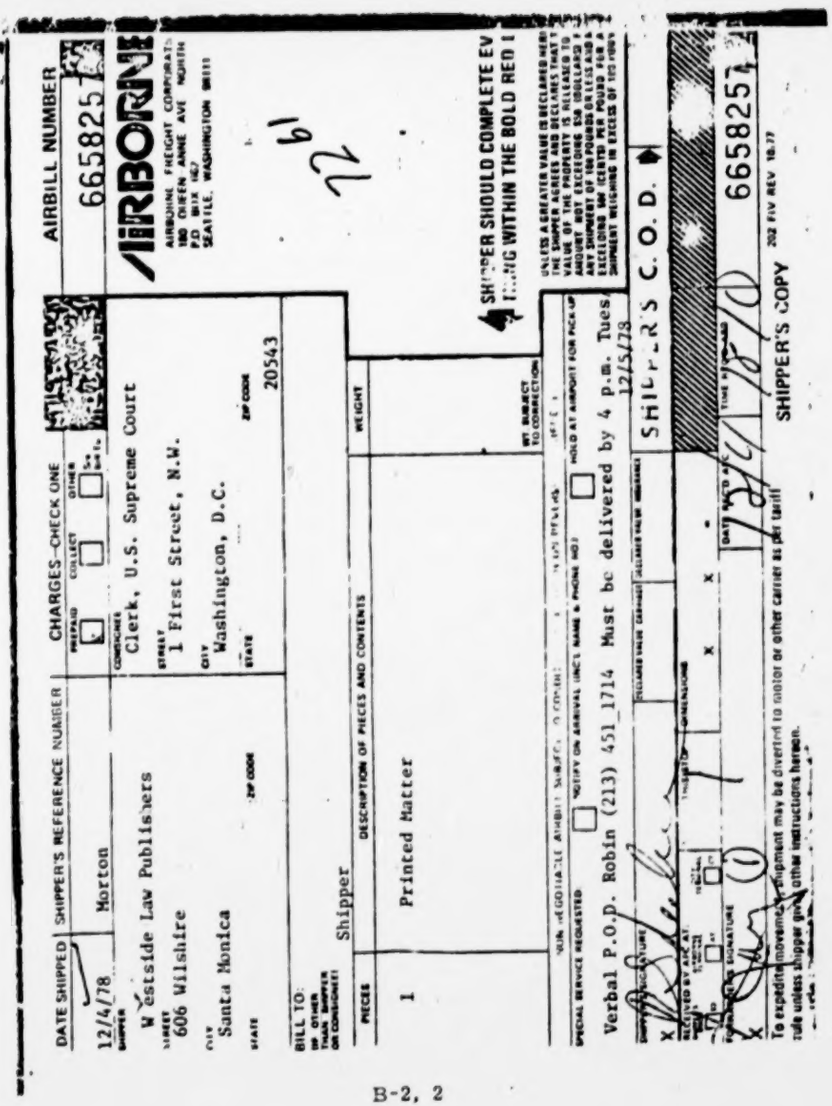
2. This freight was dropped at TWA, Los Angeles International Airport and logged at the ticket counter for Flight 78 to Washington, D. C.

3. The plane changed in Chicago from a 707 to a 727. We have not been able to determine if this freight boarded the plane change to Washington, D. C.

4. Both TWA and Airborne have been tracing this package. At this time we have been unable to locate the freight.

I do hereby declare under penalty of perjury that the foregoing is true and correct. Executed at Los Angeles, California this day of December 7, 1978.

Len Piazzon
District Manager


AIRBILL NUMBER 6658257

AIRBORNE

AIRBORNE FREIGHT CORPORATION
180 QUEEN ANNE AVE NORTH
P.O. BOX 467
SEATTLE, WASHINGTON 98111

CHARGES—CHECK ONE
PREPAID ☐ COLLECT ☐ OTHER ☐

DATE SHIPPED 12/4/78
SHIPPER'S REFERENCE NUMBER Morton

CONSIGNEE Clerk, U.S. Supreme Court
STREET 1 First Street, N.W.
CITY Washington, D.C.
STATE ZIP CODE 20543

BILL TO: Shipper

PIECES	DESCRIPTION OF PIECES AND CONTENTS	WEIGHT
1	Printed Matter	

SHIPPER SHOULD COMPLETE EV
FILLING WITHIN THE BOLD RED L

UNLESS A GREATER VALUE IS DECLARED HERE
THE SHIPPER AGREES AND DECLARES THAT T
VALUE OF THE ENTIRE SHIPMENT DOES NOT
ANY SHIPMENT OF 100 POUNDS OR LESS AND A
EXCEEDING 50¢ (CENTS) PER POUND FOR A
SHIPMENT WEIGHING IN EXCESS OF 100 POU

DIRECT TO CONNECTION

SPECIAL SERVICE REQUESTED ☐ NOTIFY ON ARRIVAL (INCL. NAME & PHONE NO.) ☐ HOLD AT AIRPORT FOR PICK-UP

Verbal P.O.D. Robin (213) 451_1714 Must be delivered by 4 p.m. Tues 12/5/78

SHIPPER'S C.O.D. 6658257

SHIPPER'S COPY

To expedite movement, shipment may be diverted to motor or other carrier as per tariff rule unless shipper gives other instructions herein.

AIRBILL NUMBER: LAX 6658257 | DATE SHIPPED: 12/04/78 | CHARGES: PREPAID | TARIFF DEST.: DCA | DECLARED VALUE:

AIRBORNE
AIRBORNE FREIGHT CORPORAT
P.O. BOX 662
SEATTLE, WASHINGTON 9811

SHIPPER AND CONSIGNEE
sWESTSIDE LAW PUBLISHERS
h606 WILSHIRE BLVD 606 SANTA MONICA CA 90401
cCLERK, US SUPREME COURT
o1 FIRST ST N.W. WASHINGTON DC 20543

BILL TO
WESTSIDE LAW PUBLISHERS
606 WILSHIRE BLVD 606
SANTA MONICA CA 90401

ORIGINAL
INVOICE

PLEASE RETUF
DUPLICATE CO
WITH YOUR
REMITTANCE

LOTHROP

PIECES	DESCRIPTION OF PIECES	WEIGHT	SCALE / CONN	RATE	REASON FOR "OTHER" CHARGE
1	PEF MORTON P/M OTHER CGS: VERBAL POD TO ROBIN212/451-1714 MISC. SPEC P/U	10	170S	MIN	A. ASSEMBLY FEE B. DISTRIBUTION FE C. SPECIAL SVC CHG D. XTRA SERVICE E. OTHER (SEE DESCRIPTION AB

FREIGHT CHARGES	AFC PICK UP	AFC DELIVERY	EX. VAL. / INSUR.	OTHER			
8.11 ADVANCES ORIGIN	01/ 22.75 ADVANCES DEST.	5.75 SURFACE FWD	COD FEE	DE C.O.D. →	35.00	$ 72.61 ↑ PAY THIS AMOUNT ↑	6658257 ↑ REFER TO THIS NUMBER WHEN REMITTING ↑

NO OTHER INVOICE WILL BE RENDERED. TARIFF REGULATIONS REQUIRE PAYMENT WITHIN 15 DAYS.

RECEIVED BY: x LAX10606182339 | COMPANY | DATE | TIME

B-2, 3

ROSALE MORTON
15601 HIGHKNOLL RD
ENCINO CA 91436

APPENDIX C

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2139743969 TDRN LOS ANGELES CA 30 12-06 1259P EST
PMS UNITED STATES SUPREME COURT CLERK OF THE COURT MR RODAK JR
, DLR ASAP, DLR
WASHINGTON DC
PETITION CERTIORARI IN RE MORTON SENT AIRBORN MONDAY DECEMBER 4,
1978. DELAYED SNOWSTORM CHICAGO REQUEST EXTENSION OF TIME FOR FILING
TEN DAYS OR LESS
R MORTON ATTORNEY (15601 HIGHKNOLL RD ENCINO CA 91436)

13:00 EST

MGMCOMP MGM

Los Angeles, Cal. OCT 12 1972, 19

Norton
vs.
Norton
No. 52725

, ESQ.

Roxbury Drive
lls, CA 90210
-5307 and 275-2025

spondent-Appellant
N

APPENDIX D

HE COURT:

Because the subject appeal was decided olely on state grounds the petition is nied.

etition for Certification by the State Court)

OCT 13 1972

CLAY ROBBINS, Clerk

Deputy